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October 23, 2006

Commissioners  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814  
SENT VIA FACSIMILE

RE: Item 17 on the Agenda of the October 24, 2006 Meeting – Proposed Amendments to Regulations 18421.1 and 18216

Dear Commissioners:

Earlier this year news reports identified a troubling and apparently common fundraising practice, known as "pledging," crafted to hide political contributions from public disclosure. We asked that the FPPC clarify the rules to end this subterfuge. Shockingly, the FPPC instead proposed changes to Regulations 18421.1 and 18216 that will result in less disclosure and more opportunity for politicians to hide their special interesting funding at critical moments. The proposed rules address one form of the pledging practice and allow politicians who receive contributions in the form of installment payments – for example, a \$1,200 contribution paid as \$100 monthly credit card contributions – to report the donation only as the cash arrives, rather than when the donation is promised and the payments begin.

The insidiousness of the larger practice of pledging came to light in August when acceptance, but not disclosure, of pledged contributions was revealed by the *Orange County Register*. As the Legislature entered its most frenzied period, the end of session, politicians held an estimated 100 fundraisers around the Capitol. This alone is a disturbing practice, as politicians were soliciting contributions from dozens of lobbyists and special interests at the precise moment that those contributors were pressing elected officials for votes up or down on hundreds of issues that needed to be addressed in the waning days and hours of session.

The unseemliness of these ill-timed solicitations would, government watchdogs expected, be somewhat mitigated by the requirement that politicians immediately disclose their donors, as we had entered a 24-hour reporting period. To our surprise, however, many of these politicians did not report many or, in some instances, any contributions after their fundraisers, despite eyewitness testimony that lobbyists attended the events. We learned, and the *Register* reported, that a number of lawmakers were hiding the donations by accepting pledged contributions rather than receiving cash. We cannot know how many of those contributions that were disclosed during the end of session fundraising orgy represent only the tip of the donation iceberg because they were but the first installment of a larger donation. That is because the FPPC's current

interpretation of the law, which would solidify under your proposed rules, allows politicians to withhold the total amount of any installment-based contribution and only report the portion of the promise that has been paid.

Allowing politicians to conceal donations from special interests (or the size of the size donations) while deciding the fate of more than 1,500 proposed laws is convenient for lobbyists and lawmakers alike. But it leaves the public in the dark about one of the most despicable and corrupting traditions in Sacramento: fundraising while legislating. Whether by pledging to hide a donation entirely or by using monthly credit card payments to diminish the apparent size of a contribution, politicians and special interests have been allowed to keep secret the vital information that helps Californians assess the integrity and propriety of their elected officials and the decision making process itself. This practice fails the key test that should be asked of any rules concerning political disclosure: does the citizen have more or less access to relevant information about the possible influence of special interests over their elected representatives?

As the official political watchdog, it is your duty to ensure that the citizenry knows everything possible about who is financing the campaigns of our representatives. Indeed, the FPPC's recently published strategic plan sets out in the mission statement an expectation of developing novel tactics in order to fulfill this duty:

"The FPPC commit[s] to...Serve the needs of the People by diligently pursuing innovative and responsive services."

Yet these proposed regulations, in the name of clarifying existing rules, ensure that we will know less about the money flowing from lobbyists and special interests to politicians than ought to be available. This proposal to, in essence, shackle political disclosure rules to a status quo that fails the basic tenet of disclosure and fair practices, must be rewritten.

We ask that you amend these proposed regulations. As we suggested in our August 30, 2006 letter, we believe that pledged contributions, including those in which the first in a series of installment payments is made, should be fully reportable as enforceable promises as of the date the pledge or first payment is made.

In discussing this suggestion with FPPC staff, a question arose as to whether or not such a rule might allow politicians to fraudulently inflate their campaign war chest by reporting pledges that were not actually made, thus giving the politician apparently more funds than they actually have or will have. This war chest thumping, the staff suggested, might allow one politician to scare other politicians out of a race believing they cannot compete with the contribution advantage of the apparently well-funded candidate.

Beyond serving as a reminder of the need for broad campaign financing overhaul that will allow good candidates to compete without the need for constant fundraising, this concern should not trump the real need for disclosure of promises of actual contributions. First, any politician using pledges to bolster his or her apparent financial strength will still have to defend the specific contributions being reported, as would the ersatz donors, if asked by news reporters or others. Second, and perhaps the Commission might need to include explicit rules on this matter, these pledges would not be reflected in the "cash on hand" line in disclosure reports, thus weakening the claim of financial superiority.

The theoretical potential for disclosure hyperbole notwithstanding, the benefits of shedding light on promised contributions are both obvious and real. Although all the cash may not have been pumped into the campaign bank account on, say, August 25<sup>th</sup>, the fact that it is in the pipeline is of great benefit to the politician who will be voting on that donor's interests over the remaining days of the legislature, and the public should know the promise exists. A promise is particularly insidious if the money would not be paid until after a vote desired by the giver.

Further, the public is properly more suspicious of large donors to politicians than small donors. While we need to watch the entire flow of money to politicians, experience tells us that we need to be particularly attentive to the larger contributions and the influence wielded by the largest donors. However, under your proposed rule a politician may connive contribution installment cycles that make high-paying special interest donors look like mom and pop political donors. It would be harder to distinguish the big money from the little money.

Pledged contributions and installment payments should be reported as contributions when the initial promise is made. We would also consider an approach that required the reporting of pledges and outstanding amounts on an installment donation as a separate item in campaign reports. That is, these promises would be reported in a manner similar to Form 460's Schedule F, "Accrued Expenses." These "Pledged Contributions" would be reported following the same rules and within the same forms as regular contributions, but would be tallied in a separate schedule. As the payments arrived, the "Pledged Contributions" reported in prior reports would be moved to "Contributions Received." In this way, politicians would not be allowed to hide contributions using the deceptive tactics that the current proposal allows.

Of course, one might argue that politicians would still simply not report pledges, or not acknowledge that a \$100 contribution is actually the first installment on a \$1200 contribution. If you amend these rules, politicians might still try to hide donations. But then they'd be breaking the law.

We urge you to tighten the disclosure rules and amend these proposed rules to innovatively respond to the politicians' practices and the public's needs. Thank you for considering our views.

Sincerely,



Douglas Heller

cc: Emelyn Rodriguez, Commission Counsel  
Luisa Menchaca, General Counsel